

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL J. ZELLIS,

Petitioner,

vs.

BRIAN E. WILLIAMS, SR., *et al.*,

Respondents.

Case No. 2:13-cv-01898-APG-CWH

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. The matter has not been properly commenced because petitioner submitted incomplete financial paperwork. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner in the instant action has failed to submit an *in forma pauperis* application that provides the necessary financial information. Petitioner failed to include a copy of his inmate account statement and failed to submit a financial certificate signed by an authorized prison or jail officer. The Court is unable to see, *inter alia*, the regularity and amount of any incoming funds as well as the extent to which petitioner is making discretionary expenditures that instead could be applied to payment of the filing fee.

Due to the defects presented, the pauper application will be denied, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper

1 application with all required attachments. It does not appear from file review that a dismissal
2 without prejudice will materially affect a later analysis of the timeliness issue or other issues in
3 regard to any promptly filed new action. In this regard, petitioner at all times remains responsible
4 for calculating the running of the federal limitation period as applied to his case, properly
5 commencing a timely-filed federal habeas action, and properly exhausting his claims in the state
6 courts.

7 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (Dkt.
8 #1) is **DENIED** and that this action is **DISMISSED WITHOUT PREJUDICE** to the filing of a
9 new petition in a new action with a properly completed pauper application with all new and
10 complete financial attachments.

11 **IT FURTHER IS ORDERED** that all pending motions (including those filed at Dkt. #s 2 &
12 3) are **DENIED** without prejudice.

13 **IT FURTHER IS ORDERED** that the Clerk of Court shall send petitioner two copies each
14 of an application form to proceed *in forma pauperis* for incarcerated persons and a noncapital
15 Section 2254 habeas petition form, one copy of the instructions for each form, and a copy of the
16 papers that he submitted in this action.

17 **IT IS FURTHER ORDERED** that petitioner may file a new petition and *in forma pauperis*
18 application in a new action, but he may not file further documents in this action.

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

20 **IT FURTHER IS ORDERED** that a certificate of appealability is **DENIED**. Reasonable
21 jurists would not find the dismissal of the improperly-commenced action without prejudice to be
22 debatable or wrong.

23 Dated this 18th day of October, 2013.

24 

25 UNITED STATES DISTRICT JUDGE